



POLICE DEPARTMENT

April 3, 2015

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Daniel Sbarra
Tax Registry No. 920813
Investigative Support Division
Disciplinary Case No. 2013-10041

The above-named member of the Department appeared before me on May 9, October 10, December 15, 2014, charged with the following:

1. Said Lieutenant Daniel Sbarra, on or about May 16, 2012, at approximately 1620 hours, while assigned to the 77th Precinct and on duty, in the vicinity of Ralph Avenue between Sterling Place and Park Place, Kings County, abused his authority as a member of the New York City Police Department, in that he stopped Steven Miller, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 - STOP AND FRISK

2. Said Lieutenant Daniel Sbarra, on or about May 16, 2012, at approximately 1620 hours, while assigned to the 77th Precinct and on duty, in the vicinity of Ralph Avenue between Sterling Place and Park Place, Kings County, abused his authority as a member of the New York City Police Department, in that he frisked Steven Miller, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK

The Civilian Complaint Review Board (CCRB) was represented by Vivian Cedeno, Esq. Respondent was represented by Michael Lacondi, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

CCRB called Erica Mason-Plant, Steven Miller, Police Officer Gobin Raghunath and Police Officer Melissa Timmins as witnesses. For Respondent's case, Respondent testified on his own behalf.

DECISION

Respondent is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2.

FINDINGS AND ANALYSIS

Respondent is charged with stopping and frisking Steven Miller without sufficient legal authority.

The Stop

On May 16, 2012, Respondent was working as the Impact Lieutenant driving in an unmarked car in the Crown Heights section of Brooklyn. He was training two new police officers, Officer Melissa Timmins and Officer Gobin Raghunath, on how to observe people on the street and what to look for when someone is about to commit a crime. When they drove by Ralph Avenue between Park Place and Sterling Place, Respondent told them to look at the man that was walking along Ralph Avenue. That

person was Steven Miller. According to Respondent, there was “a very problematic housing development” right on Sterling and Ralph Avenue.

CCRB argued that Respondent had no legal authority to stop Steven Miller. The legal basis for a stop is reasonable suspicion that a person has committed, is committing, or is about to commit a crime. *Patrol Guide* 212-11 provides that factors which contribute to “reasonable suspicion” include the demeanor of the suspect, the gait and manner of the suspect, any knowledge the officer may have of the suspect’s background and character, and the particular streets and areas involved.

In this case, Respondent testified that he saw Miller looking in store windows, stopping at a couple of the windows, and looking up and down the street, in a manner consistent with casing a location. It was in the late afternoon that he observed Miller for a couple of minutes. At one point, Miller made eye contact with Respondent in the car and started to walk the other way. Respondent said, “I thought that I just prevented a robbery. I thought he saw us and now he is going to just leave and make it look like he wasn’t doing anything.” Raghunath also saw Miller looking in and out of two delis, but not entering them, and believed that Miller was casing the location. Timmins confirmed these observations and perceptions.

It was undisputed that the stop took no more than two or three minutes. After Respondent asked Miller some questions, such as where he was coming from and if he had identification. He may have also asked Miller why he was looking into stores, whether he had a criminal history and what he had in his pocket.

The evidence demonstrated that Respondent observed conduct in a high crime area that indicated Miller was casing some stores and about to rob them. The officers

with Respondent corroborated seeing the same conduct and behavior. Thus, Respondent had reasonable suspicion to stop and question Miller. Accordingly, Respondent is found Not Guilty of stopping Miller without sufficient legal authority.

The Frisk

Four witnesses stated that they saw Respondent frisk Miller. This included Miller, Erica Mason-Plant, the complainant's girlfriend, and Officers Raghunath and Timmins. Mason-Plant and Miller described Respondent patting two of Miller's pant pockets. Raghunath saw Respondent frisk Miller's pant pocket. Thus, the frisk described by three witnesses was a pat on Miller's pocket, presumably to check for a weapon. In her statement to CCRB, Timmins confirmed that she saw a frisk, but said it was of Miller's waist band. (CCRB Exhibit 5)

Respondent denied that he frisked Miller. On cross-examination, he agreed that there was no reason to frisk Miller. This was because Miller was cooperative and gave Respondent his identification. Respondent did not see a weapon or a suspicious bulge on him. Miller did not act in a way that made Respondent fear for his safety. Miller's calm demeanor was corroborated by all the other witnesses. Timmins and Raghunath confirmed that they did not observe a weapon or suspicious bulge and neither perceived Miller as dangerous.

Respondent's counsel argued that Raghunath's testimony that Respondent frisked Miller's pocket could not be trusted because the Stop, Question and Frisk Report (UF-250) that Raghunath prepared stated that no frisk had been conducted. However, Raghunath testified credibly that at the time of this incident he had only been out of the

Police Academy for 6 months. He checked "No" on the box for frisk because he himself did not conduct the frisk. If he had conducted a frisk, he said, he would have checked "Yes." Raghunath understood now that he should have indicated on the UF-250 that Respondent frisked Miller.

While Timmins appeared to be reneging on her original statement to CCRB, she could only claim that she could now not remember what happened. She did not deny that she originally told CCRB that she saw Respondent frisk Miller.

As CCRB argued, the two new officers were the most neutral witnesses and thus the most credible. Raghunath clearly remembered seeing Respondent frisk Miller's pocket. Timmins' original statement to CCRB that Respondent frisked Miller's pocket was credible. Accordingly, Respondent is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

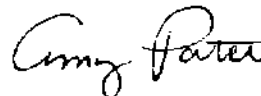
Respondent was appointed to the Department on December 8, 1997. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB recommended a 15 vacation day penalty. Because Respondent has been found not guilty of stopping Miller without sufficient legal authority and the frisk he conducted was a non-intrusive pat down that did not escalate, a lesser penalty is warranted. A lower penalty is also justified in light of the most recent decisions regarding stop and frisk. In *Case No. 9623/13* (March 4, 2015), in which the officer was

found guilty of an improper search and frisk of a complainant's pocket, the Police Commissioner determined that a lesser penalty of receiving a reprimand was warranted. In another recent case, in which two officers were found guilty of a stop and search, the Police Commissioner determined that, based on the good service records of both officers, each deserved a lesser penalty of three days. *Case Nos. 9653/13 and 9654/13* (February 19, 2015).

However, in the aforementioned cases, the officers had no prior disciplinary record. Here, Respondent has been found guilty of similar misconduct in two prior adjudicated trials in the last eight years. He was also a lieutenant responsible for training new officers and has set a bad example. Based on graduated discipline, it is recommended that Respondent forfeit eight vacation days.

Respectfully submitted,



Amy J. Porter
Assistant Deputy Commissioner – Trials

APPROVED

SEP 21 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT DANIEL SBARRA
TAX REGISTRY NO. 920813
DISCIPLINARY CASE NO. 2013-10041

Respondent has received an overall rating of 4.5 “Extremely Competent/Highly Competent” on his last three annual performance evaluations. He has been awarded 11 medals for Excellent Police Duty and five for Meritorious Police Duty. [REDACTED]
[REDACTED]

Respondent has been the subject of two prior adjudications. In a 2007 trial, he was found not guilty of [REDACTED]
[REDACTED]

He also received reinstruction regarding vehicle searches.

In 2011, Respondent pled guilty to unlawfully stopping and questioning a complainant, entering and searching the complainant’s residence, and authorizing the complainant’s arrest. He also failed to ensure that a Stop, Question, and Frisk Report be prepared for the encounter. For this misconduct, he forfeited 20 vacation days and received retraining.

In 2006 and 2010, Respondent was placed on Force Monitoring for receiving three or more CCRB complaints within a year. Based on his overall record, he has been on Level II Force Monitoring since September 2013.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner – Trials